Filed 8/2/02 J. B. v. Superior Court CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

J.B.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY SERVICES AGENCY,

Real Party in Interest.

F040662

(Super. Ct. Nos. 504050, 504051, 504052, 504053)

O P I N I O N

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Nancy Barnett Williamsen, Commissioner.

Laura Pedicini, for Petitioner.

No appearance for Respondent.

Michael H. Krausnick, County Counsel and Linda S. Macy, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

---

*Before Dibiaso, A.P.J., Harris, J. and Levy, J.

Petitioner J.B. seeks extraordinary writ review (Welf. & Inst. Code,[1] §366.26, subd. (*l*); Cal. Rules of Court, rule 39.1B) of respondent court's order that a section 366.26 hearing be held on August 6, 2002 as to her daughter. She contends the court erred in terminating reunification services. We will affirm the judgment.

STATEMENT OF THE CASE AND FACTS

This petition pertains to B.B., petitioner's biological daughter. Petitioner and her husband, Robert, also cared for his three biological children, V.B., L.B. and J.R.B., and his three stepsons, D.S.M., D.M.M. and D.V.M., from a prior marriage.[2] The instant dependency proceedings arose out of an unsolved allegation of intentional child abuse involving petitioner's stepdaughter, L.B., who suffers from Cornelia de Lange syndrome, characterized by mental retardation, facial and physical deformities, and stunted growth. The condition renders her unable to walk or talk. She ambulates by crawling on her forearms and knees and she makes a distinctive high-pitched cry when in distress.

The incident occurred on the afternoon of October 18, 2000. The entire family was living with petitioner's mother, Edna. Edna found then-four-year-old L.B. in the bathtub sitting on her knees in scalding water. The shower curtains were drawn and the water release valve was closed. L.B. sustained second and third degree burns over approximately 30 percent of her body, extending from her lower abdomen to the bottom of her feet. The burn was so severe that the skin from both knees down peeled away from her legs and was draped over her feet.

Petitioner and Robert reported to investigating officer Ussery the injury was accidental and that L.B. climbed into the bathtub and turned on the water. Neither saw

---

[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] On June 20, 2002, Robert filed a petition for extraordinary writ, in our case number F040661, arising from the same dependency proceedings.

the child enter the bathroom as Robert was in the kitchen and petitioner was in a bedroom talking to Edna. Edna confirmed that petitioner was in the bedroom with her when Edna heard L.B. crying. Everyone interviewed, including Robert's stepsons, believed L.B. could climb into the bathroom. Only petitioner and Robert believed she could turn on the water.

Any thoughts of an accidental burning were dispelled, however, after L.B. was evaluated by Dr. Angela Rosas, M.D., an expert in child abuse injuries. She concluded, based on the burn pattern and L.B.'s physical limitations, that someone deliberately placed her in the scalding water. Dr. Rosas reported:

> "The pattern of the burn indicates that the child was in a sitting position with her feet under her buttocks and leaning to the left side when the scalding occurred. The water must have been 3-4 inches deep and very hot. There are only two splash marks on the left forearm indicating that although her left arm may have been moving, she was otherwise motionless in the lower extremities during the scalding. The scalding pattern is only consistent with her remaining in the sitting position as described above during the entire scalding. The pattern is not consistent with her kneeling or extending her legs at any time during the scalding nor falling into the hot water. This would indicate that she was either physically held down in the sitting position during the scalding or she 'froze' while exposed to extreme pain. It is also unlikely that she would have been in the empty tub as the hot water was rising without moving from the sitting position. I conclude that someone else must have lifted her into the scalding water in the home."

Ussery also concluded L.B. was intentionally burned. He photographed her injuries and, after observing her small hands and body, doubted she could climb into the bathtub and turn on the water.

As the focus of the investigation changed, family members offered potential suspects in the burning. Phyllis, Robert's first cousin, and Laverne, Robert's sister, suspected petitioner intentionally injured L.B. because she had lost patience with the child. Petitioner, however, told them she was in the kitchen with Robert when L.B. was discovered in the bathtub. They also thought Robert's stepsons, then-17-year-old D.S.M.

or 14-year-old D.M.M., could have injured L.B. because they were forced to take care of her during the parents' frequent absences.

Edna, meanwhile, changed her initial assessment of the event. During a second interview, she confided her belief the incident was intentional, in light of the closed water valve. Further, she suspected D.S.M. harmed L.B. because he was tired of taking care of her. Additionally, Edna observed him mistreating L.B. on other occasions. She also told Ussery petitioner and Robert took B.B. from her care and left, fearing they were suspected of child abuse.

D.S.M. stated he was asleep in another bedroom when he heard Edna call L.B.'s name. He ran to the bathroom and observed Edna pulling L.B. out of the bathtub. He suspected petitioner injured L.B. because she was not close to petitioner's children by his previous marriage.

On October 25, 2000, the San Joaquin County Human Services Agency (agency) detained all seven children. The agency also filed dependency petitions, alleging L.B. was severely burned by immersion in scalding water and the parents were uncooperative with the police and provided inconsistent explanations for the injury. (§ 300, subd. (a).) The agency further alleged V.B., J.R.B. and B.B. were at risk of similar injury and V.B., J.R.B. and L.B. were left without support because their biological mother was deceased. (§§ 300, subds. (g), (j).) The court changed the subdivision (a) allegation to a subdivision (b) allegation and sustained the subdivision (b), (g) and (j) allegations. The court ordered the parents to undergo psychological evaluations and random drug testing pending the disposition hearing set for February 6, 2001.

In April 2001, the case was transferred to Stanislaus County, petitioner's county of residence and set for a May 1, 2001, dispositional hearing. Prior to the transfer, both parents completed the court-ordered psychological exams and attended parenting classes. In a psychological evaluation dated March 28, 2001, Dr. Doracy Testa, Ph.D., reported that J.B. could effectively parent a child with special needs if provided counseling and

parenting classes. However, she recommended she be referred for further psychiatric evaluation to rule out the presence of mania.

At disposition on May 1, 2001, the Stanislaus County juvenile court ordered both parents to attend parenting classes and obtain suitable housing. The court found the parents had been offered reasonable services. The court also made other findings, not relevant to the instant proceedings, which this court affirmed on appeal.[3]

Over the next twelve months, petitioner and Robert participated in their case plan. They visited the children regularly and attended parenting classes. However, they did not have stable housing or employment. At the six-month review hearing on June 26, 2001, the court found both parents were provided reasonable services and continued services for another six months.

In its 12-month review, dated November 29, 2001, the Stanislaus County Community Services Agency (hereinafter agency) reported petitioner disclosed to her therapist that her parents used crack cocaine when she was a child and her mother punished her by burning her when she was two years old. Of paramount concern, however, was the fact the detectives had not identified L.B.'s abuser. Attached to the report was a letter dated October 18, 2001, from the case worker addressed to petitioner and Robert informing them she would not recommend return of the children to their custody unless a perpetrator was identified.

At the 12-month review hearing, conducted on December 11, 2001, the court ordered petitioner to receive counseling specifically related to her childhood burning and ordered additional reunification services for both parents. On March 27, 2002, the agency filed a section 388 petition seeking to add random drug testing to the case plan for

---

3 *Stanislaus County Community Services Agency v. Jalaina B.* (Jan. 10, 2002, F038489 and *Stanislaus County Community Services Agency v. Robert B.* (Feb. 7, 2002, F038490).

both parents because they were living with Edna who was using crack cocaine. The court set the section 388 petition for hearing on April 16, 2002.

In its 18-month review, the agency reported both parents completed counseling, but lacked several parent/child labs. They continued to visit regularly, but were still living with Edna and were soon to be evicted. Although the case worker made attempts to assist the parents in obtaining housing, they showed no effort to seek and maintain suitable housing. Further, they showed no desire to identify the perpetrator of the child abuse. The case worker concluded it would be unsafe to return any of the children to their custody and recommended the court terminate reunification services. The case worker attached four pictures depicting L.B.'s burns to the review report.

The court conducted a consolidated section 388 petition and contested review hearing on May 14, 2002. Counsel for petitioner objected to the admission of the photographs appended to the 18-month status review report, arguing they were irrelevant and prejudicial. The court overruled her objections, finding the severity of the burns relevant to the agency's recommendation to terminate services.

Petitioner and Robert testified, both placing petitioner in the kitchen with Robert when the injury occurred, despite petitioner's statements to Ussery and Laverne that she was in the bedroom with Edna. Petitioner denied ever speaking to Laverne about the incident. Robert implied he and petitioner believed Edna burned L.B. He also testified he applied for an apartment for the family and felt confident their application would be approved.

Matt Bovenkerk, program manager for Sierra Vista Children's Center, testified both parents demonstrated appropriate parenting skills. However, because a perpetrator had not been identified, he could not determine whether it was safe to return the children to their parents' custody.

The case worker testified she spoke to the apartment manager who had no intention of approving petitioner's housing application. She also believed the parents knew, but were unwilling to reveal, who burned L.B.

At closing argument, counsel for petitioner argued she was not provided reasonable services because she was never psychiatrically evaluated to rule out mania. The court found the parents had been provided reasonable services and that counsel had inappropriately waited 15 months after the recommendation was made to object to the court's failure to order further psychological evaluation. The court further found the children would be at substantial risk of detriment if returned to their parents' custody given their failure to obtain suitable housing and their significant contact with Edna who they both suspected of burning their child. Accordingly, the court terminated reunification services and set the permanency planning hearing. County counsel withdrew the section 388 petition.

DISCUSSION

Petitioner claims she did not receive reasonable services because the court impliedly made identification of L.B.'s abuser a requirement of her case plan without providing her notice and the agency failed to ensure she received a psychiatric evaluation. She further argues the court's consideration of the photographs was prejudicial. We find no error.

At every review hearing, the juvenile court must determine whether the agency offered the parent reasonable reunification services. (§§ 366.21, subds. (e), (f), 366.22, subd. (a).) Services must be designed to eliminate the conditions which led to juvenile court jurisdiction, specifically tailored to fit the unique circumstances of the offending parent and put the family on notice as to what must be accomplished to reunite the family. (*In re Dino E*. (1992) 6 Cal.App.4th 1768, 1777.) In this case, identification of the abuser was never made part of petitioner's case plan and there is no evidence the

court made return of B.B. to petitioner's custody contingent upon petitioner revealing L.B.'s abuser.

Moreover, petitioner waived her right to challenge the agency's failure to follow-up on the psychiatric evaluation by failing to appeal the juvenile court's reasonable services finding issued at the dispositional hearing. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811-812.)

Finally, petitioner waived her right to appellate review of the admissibility of the photographs by failing to set forth an adequate argument. She claims error, yet fails to cite to the record or pertinent legal authority or develop the issue she attempts to raise. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120.) Based on the foregoing, we affirm the juvenile court's order terminating reunification services and setting the matter for permanency planning.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.